IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE FIRST DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL No.1629 of 2004

AND

WRIT PETITION No.21884 of 2002

WRIT APPEAL NO : 1629 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 04-08-2004 in W.V.M.P.No.1911 of 2004 in W.P.M.P.No.27422 of 2002 in W.P.No.21884 of 2002 on the file of the High Court.)

Between:

1 Kommineni Mattaiah, S/o. K.Rosaiah,
R/o. Pulipadu, Gurajala Mandal, Guntur District.

2 Smt.Sakhila Ramana, W/o. Eswar Reddy,
R/o. Gurajala, Gurajala Mandal, Guntur District.

3 Smt.Sureddy Arunakumari, W/o. Srihari Reddy,
R/o. Gurajala, Gurajala Mandal, Guntur District.

4 Pola Venkateswarlu, S/o. Ramasubbaiah,
R/o. Gurajala, Gurajala Mandal, Guntur District.

5 Penugonda Amruthalingeswara Rao, S/o.Samba Murthy,
R/o. Gurajala, Gurajala Mandal, Guntur District.

6 Bavirisetti Hanumantha Rao, S/o. Venkateswarlu,
R/o. Gurajala, Gurajala Mandal, Guntur District.

7 Yakkala Rama Murthy, S/o. Veeranarayana,
R/o. Gurajala, Gurajala Mandal, Guntur District.

..... APPELLANTS

AND

1 The District Collector (Panchayats), Guntur District, Guntur.

2 The Gurajala Gram Panchayat, Gurajala Village, Gurajala Mandal, Guntur District rep. by Panchayat Secretary.

3 The Mandal Surveyor, Gurajala Mandal, Gurajala, Guntur District.

(R.3 is impleaded as per Court's order dt.1-11-2004).

.....RESPONDENTS.

Counsel for the Appellants: Mr.PRABHUNATH VASIREDDY

Counsel for the Respondent Nos.1 & 3:G.P. for GRAMPANCHAYAT RAJ

Counsel for the Respondent No.2: Mr. DAMMALAPATI SRINIVAS

WRIT PETITION No: 21884 of 2002

Between:

1 Kommineni Mattaiah, S/o. K.Rosaiah, R/o. Pulipadu, Gurajala Mandal, Guntur District.

2 Smt.Sakhila Ramana, W/o. Eswar Reddy, R/o. Gurajala, Gurajala Mandal, Guntur District.

3 Smt.Sureddy Arunakumari, W/o. Srihari Reddy, R/o. Gurajala, Gurajala Mandal, Guntur District.

4 Pola Venkateswarlu, S/o. Ramasubbaiah, R/o. Gurajala, Gurajala Mandal, Guntur District.

5 Penugonda Amruthalingeswara Rao, S/o. Samba Murthy, R/o. Gurajala, Gurajala Mandal, Guntur District.

6 Bavirisetti Hanumantha Rao, S/o. Venkateswarlu, R/o. Gurajala, Gurajala Mandal, Guntur District.

7 Yakkala Rama Murthy, S/o. Veeranarayana, R/o Gurajala, Gurajala Mandal, Guntur District.

..... PETITIONERS

AND

1 The District Collector (Panchayats), Guntur District, Guntur.

2 The Gurajala Gram Panchayat, Gurajala Village, Gurajala Mandal, Guntur District rep. by Panchayat Secretary.

3 The Mandal Surveyor, Gurajala Mandal, Gurajala, Guntur District.

(R.3 is impleaded as per Court's order dt.1-11-2004).

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to declare the action of the 2nd respondent in issuing the impugned proceeding No. ROC No.47/2002 dt. 26.10.2002 requiring the petitioners to stop construction on the sites owned by the petitioners as arbitrary, illegal, contrary to Rule 12 of the A.P. Gram Panchayat Building Rules, 1972 offending Article 14 of the Constitution of India by way of writ, order or direction, one more particularly in the nature of Writ of Mandamus and set aside the same with a consequential direction to the respondents not to interfere with the construction of the petitioners in the sites owned by them according to the plans submitted by them in Gurajala village, Gurajala Mandal, Guntur District.

Counsel for the Petitioners: Mr.PRABHU NATH VASIREDDY

Counsel for the Respondent Nos.1 & 3:G.P. for GRAMPANCHAYAT RAJ

Counsel for the Respondent No.2: Mr.SRINIVAS DAMMALAPATI

-

The Court made the following:

ORAL JUDGMENT: (per the Hon'ble the Chief Justice)

On oral request, we implead Mandal Surveyor of Gurajala Mandal, Guntur District, as party respondent.

Writ petitioners have filed writ petition saying that plans for construction of buildings were submitted. However, such plans were to raise construction in the site of old Court buildings in Ward No.6 of Gurajala Gram Panchayat. Though plans were received in the office of the Gram Panchayat on 29-7-2002, no communication was received by the petitioners either accepting or rejecting the applications of the petitioners. Treating it as a deemed sanction, petitioners commenced construction of work. Petitioners were served with notice dated 26-10-2002 asking them to stop construction failing which the Gram Panchayat would demolish the same since there was no sanction.

Writ petition has been filed. Earlier interim order was passed, but later on it was vacated on the stand taken by the Gram Panchayat on record, to which no reply has been filed, saying that without applying for building permission, construction

was commenced in May 2002 itself. On 20-5-2002, Panchayat has issued notice to the petitioners saying that they shall not proceed with the construction work. It is stated that building plans were placed before the General Body on 16-9-2002 and it was noticed that the petitioners were seeking to erect structure on Gram Panchayat's land, and it was decided to conduct survey by Mandal Surveyor. Notices were issued to the petitioners, but they failed to respond. Notice was served on 10-10-2002 to the petitioners. Therefore, the contention of the respondents is that, in the garb of the alleged sanction, construction was going on old Court building site and building was constructed without permission.

We have heard the learned counsel for the parties.

Both the counsel submit that in case survey is conducted with regard to the land in question by Mandal Surveyor, they have no objection for disposal of the writ petition.

Accordingly, we dispose of both the writ petition as well as writ appeal with the following directions.

The Mandal Surveyor, in the presence of petitioners as well as respondent Panchayat, will carry out the survey of the site in which petitioners are raising construction. As a result of the survey, in case it is found that the site belongs to petitioners-appellants, respondent Panchayat will consider petitioners' case for approval of the plans and pass appropriate orders thereupon in accordance with law uninfluenced by the said fact that construction has since been raised without permission. In case, as a result of the Mandal Surveyor's report after survey, it is found that land does not belong to petitioners, but belongs to the Gram Panchayat, Gram Panchayat will be at liberty to take out appropriate proceedings for demolition of the construction in accordance with law. Till survey is conducted, petitioners may not change the nature of the site and will not proceed with the further construction and respondent Panchayat will also not proceed to demolish the construction. Mandal Surveyor will conduct survey after notice to the parties within a period of two months from the date of receipt of a copy of this order.

Writ Appeal and Writ Petition stand disposed of accordingly.

_____

(DEVINDER GUPTA, C.J.)

1st November 2004.

_____

(C.V.RAMULU, J.)

ARS

To

1. The District Collector (Panchayats), Guntur District, Guntur.
2. The Gurajala Gram Panchayat, Gurajala Village, Gurajala Mandal,Guntur District rep. by Panchayat Secretary.
3. The Mandal Surveyor, Gurajala Mandal, Gurajala, Guntur District.
4. Two C.Cs to Govt. Pleader for Panchayat Raj, High Court

Bldgs., Hyderabad (OUT).